UNITED STATES PATENT AND TRADEMARK OFFICE

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EXAMINER
KRAMER, JAMES A

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The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte WILLIAM L. REBER

_____

Appeal 2009-003879
Application 09/698,310
Technology Center 3600

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Decided:[1] July 29, 2009

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Before, MURRIEL E. CRAWFORD, HUBERT C. LORIN and
JOSEPH A. FISCHETTI, *Administrative Patent Judges.*

FISCHETTI, *Administrative Patent Judge.*

DECISION ON APPEAL

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[1] The two-month time period for filing an appeal or commencing a civil action, as
recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this
page of the decision. The time period does not run from the Mail Date (paper
delivery) or Notification Date (electronic delivery).

STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1-32. We have jurisdiction under 35 U.S.C. § 6(b). (2002).

SUMMARY OF DECISION

We AFFIRM.

THE INVENTION

Appellant claims a system and method for performing tasks using a computerized network which does not require an optical code, such as bar code, to be present on an object in order to optically use the object to facilitate a task.

(Spec. 4, 10-13).

Claim 1, reproduced below, is representative of the subject matter on appeal.

> 1. A method comprising:
> capturing an image of at least one object;
> providing a menu of a plurality of object classes;
> receiving an object class selection from the menu;
> providing at least one task menu specific to the object class selection;
> receiving a task selection from the at least one task menu; and
> facilitating a task associated with the at least one object based on the image and the task selection.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Bolle	US 5,546,475	Aug. 13, 1996
Slater	US 6,483,570 B1	Nov. 19, 2002

Henry US 6,530,521 B1 Mar. 11, 2003

The following rejections are before us for review.[2]

The Examiner rejected claims 1, 2, 5 - 7, 11 - 13, 16 - 18, 22, 23, 26 - 28, and 32 under 35 U.S.C. § 103(a) as unpatentable over Bolle in view of Henry.

The Examiner rejected claims 3, 4, 8 - 10, 14, 15, 19 - 21, 24, 25, and 29 - 31 under 35 U.S.C. § 103(a) as unpatentable over Bolle in view of Henry and further in view of Slater.

ISSUES

Has Appellant shown that the Examiner erred in rejecting claims 1, 2, 5 - 7, 11 - 13, 16 - 18, 22, 23, 26 - 28, and 32 on appeal as being unpatentable under 35 U.S.C. § 103(a) over Bolle in view of Henry on the grounds that a person with ordinary skill in the art would understand that Bolle discloses selecting an object identity when the identity of an Apple is presented for selection?

Has Appellant shown that the Examiner erred in rejecting claims 3, 4, 8 - 10, 14, 15, 19 - 21, 24, 25, and 29 - 31 under 35 U.S.C. § 103(a) over Bolle in view of Henry and further in view of Slater on the grounds that a person with ordinary skill in the art would known that image recognition is old and well known in the art as evidenced by Slater?

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[2] The rejection under 35 U.S.C. § 101 has been withdrawn by the Examiner (Ans. 6).

PRINCIPLES OF LAW

"Section 103 forbids issuance of a patent when 'the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.'" *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1734 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 550 U.S. 398, 407 ("While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.")

FINDINGS OF FACT

We find the following facts by a preponderance of the evidence:

1. The Specification discloses associating an object with an associated resource. (Spec. 10:23-26).

2. The Examiner found that Bolle discloses

> ...capturing an image of at least one object (see for example column 5, line 60 through column 6, line 6). Bolle further teaches providing a menu of a plurality of object classes (see for example column 16 and column 19, line 61 through column 20, line 2). Bolle further teaches receiving an object class selection

from the menu (see for example column 20, lines 2
through 12). (Ans. 4).

3. The Examiner further found that "Bolle does not specifically teach
providing at least one task menu specific to the object class selection, receiving a
task selection from the at least one task menu and facilitating a task associated with
the at least one object based on the image and the task selection." (Ans. 4).

4. The Examiner however found that

> ...Henry teaches after identification of produce providing
> a task menu specific to the object (produce), receiving a
> task selection from the at least one task menu and
> facilitating a task associated with the at least one object
> based on the image and the task selected (see for example
> column 1, lines 62-66 and column 2, line 51 through
> column 3, line 5). Henry teaches this is done in order to
> provide helpful information about produce items to a
> customer (see column 3, lines 4-5). (Ans. 4).

5. The Examiner thus found that

> It would have been obvious to one of ordinary skill in the
> art to modify the produce recognition system of Bolle to
> include providing a task menu specific to the object
> (produce), receiving a task selection from the at least one
> task menu and facilitating a task associated with the at
> least one object based on the image and the task selected
> as taught by Henry. One of ordinary skill in the art would
> have been motivated to make said modification in order
> to provide helpful information about produce items to a
> customer. (Ans. 4-5).

6. Henry discloses at least one object based on the image and the task
selected in that the apparatus also

> ...determines identification information associated with

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the produce item from the produce data, displays the
identification information and navigation information for
obtaining additional information about the produce item
on the display, records a customer selection for the
additional information through the input device, retrieves
the additional information, and displays the additional
information on the display. (col. 1, ll. 60-67); [the
p]roduce recognition software 26 obtains characteristics
of a produce item from produce data collector 12, and
identifies the produce item by comparing collected
produce data with a library of produce recognition data
32. Produce recognition software 26 may additionally
retrieve an item identification number from produce
recognition data 32 and pass it produce information
management software 28 for price checks. (col. 2, ll. 51-
58).

7. Bolle discloses

FIG. 16 shows an interface 160 with a function, like a
browsing key, that allows the user to browse for an object
identity. A browsing key refers to a key word or key
feature by which to narrow down the human guided
search for object identity in the database 820. Examples
of such keys are, but are not limited to: Red 1612, Green
1613, Yellow 1614, Brown 1615, Round 1616, Straight
1617, Leafy 1618, Apples 1619, Citrus Fruits 1620,
Peppers 1621, and Potatoes 1622, as displayed in 1610.
The user can communicate through touch, voice, mouse,
keyboard, etc. The key 1600 will respond with either
another instance of 1610, in which the choices presented
1612-1622 are more specific, or with screen 1630 where
a final decision can be made. If 1619, e.g. apples, is
selected, 1600 will present human with screen 1630,
offering descriptions (sketches, photographs, words)
1631-1641 of identity of the object(s) 131. The user can

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> select choices on the screens using various known input
> devices. Any other human-friendly method or means can
> be used. (col. 19 l. 60 - col. 20, l. 12).

8. Figure 16 of Bolle shows a first screen 1610 offering object identities, e.g., apples, citrus fruits peppers, potatoes, etc.

9. The Examiner found that

> It is the position of the Examiner that image recognition
> is old and well known in the art. In fact particular image
> recognition techniques including content identification
> which includes the identification of one or more objects
> in a scene captured by an original image. Scene objects
> may include people, animals, plants, machinery and
> equipment. Examiner uses Slater as evidence of such old
> and well know technologies. (See for example column 5,
> ll. 50-60). (Ans. 5).

ANALYSIS

We affirm the rejections of claims 1-32.

*Claims 1, 2, 5 - 7, 11 - 13, 16 - 18, 22, 23, 26 - 28, and 32 rejected under 35 U.S.C.
§ 103(a)*

Initially, we note that the Appellant argues claims 1, 2, 5 - 7, 11 - 13, 16 - 18, 22, 23, 26 - 28, and 32 together as a group. Correspondingly, we select representative claim 1 to decide the appeal of these claims, the remaining claims standing or falling with claim 1.

Appellant challenges the Examiner's finding that Bolle discloses a menu that presents a plurality of object classes. (Appeal Br.12). We disagree with Appellant.

Bolle explicitly discloses object classes such as, "Red 1612, Green 1613, Yellow 1614, Brown 1615, Round 1616, Straight 1617, Leafy 1618, Apples 1619, Citrus Fruits 1620, Peppers 1621, and Potatoes 1622" (FF 7). Such items are "class" based in that, e.g., "if the class "apples," is selected, the apparatus will present the user with screen 1630, offering descriptions (sketches, photographs, words) 1631-1641 of identity of the object(s) 131." (FF 7). In other words, Bolle teaches object classes because associated information is derived, e.g., sketches, photographs, words, from a selected class object.

Appellant next asserts error in the Examiner's prima facie case which combines Henry with Bolle because Appellant alleges that in Bolle, at the point where a task menu is provided in response to an object class selection, "the identity of the object is not yet known," and thus "no suggestion exists" for combining Henry with Bolle. (Appeal Br. 12).

In reply, the Examiner maintains that "Bolle teaches recognizing the object and selecting the particular object (col. 19, l. 61 thru col. 20, l. 12; Examiner notes that apple can be selected). Therefore the object is clearly known when selected." (Ans. 9).

Our review of the excerpt in Bolle cited above by the Examiner reveals that Bolle discloses the narrowing down of an object identity, e.g., an apple to a kind of apple (FF 7, 8), and thus there is an explicit disclosure of selecting an object identity in Bolle. Moreover, because Bolle teaches the selection of an object identity, the Examiner's articulated reasoning to provide "helpful information" on such items is deemed accurate and hence reasonable. In addition, to say as

Appellant asserts, that the Examiner proposes to substitute the step of object selection for the "helpful information" mischaracterizes the Examiner's findings. Specifically, the Examiner found that "Henry teaches *after identification of produce* (emphasis added) providing a task menu specific to the object (produce), receiving a task selection from the at least one task menu...." (FF 4). The Examiner thus concludes that the modification would include "...facilitating a task associated with t*he at least one object based on the image and the task selected* (emphasis added) as taught by Henry" (FF 5), thereby insuring that that the proposed modification includes the selected object.

Moreover, to the extent Appellant seeks an explicit suggestion or motivation in the reference itself, this is no longer the law in view of the Supreme Court's recent holding in *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). Since the Examiner has provided some articulated reasoning with some rational underpinning (to provide helpful information (FF 5)) for why a person with ordinary skill in the art would modify Bolle with the task menu specific to the selected object of Henry (FF 3-5), Appellant's argument is not persuasive as to error in the rejection.

Appellant also argues

> Henry's teachings do not accommodate the identification
> of objects beyond objects that share a common object
> class; i.e., produce. For example, Henry's apparatus will
> not support the presentation of objects from other classes,
> such as a meat class, a dairy product class, a canned
> goods class, a beverage class, and so forth.
> (Appeal Br. 11).

The Examiner however maintains that since the claims fail to limit "object classes" all categories e.g. "[a]pples, cereal boxes, citrus fruit, peppers and potatoes are at least object classes consistent with Applicant's product class." (Answer 7). We agree with the Examiner because Appellant's arguments "are not based on limitations appearing in the claims . . .," and are not commensurate with the broader scope of claim 1 which merely recites a plurality of object classes without deference to whether the objects share or don't share a common class. *In re Self*, 671 F.2d 1344, 1348 (CCPA 1982).

Appellant further agues that

> While Henry teaches that various tasks may be accomplished with respect to a particular piece of recognized produce (such as providing recipe information, nutritional information, or the like), the *nature* of these tasks is not seen to vary with the selected objects themselves. ... Henry's tasks are not specific to the object that is selected. (Appeal Br. 13).

We disagree with Appellant because claim 1 only recites facilitating a task associated with the at least one object based on the image and the task selection. Nowhere in this language is it required that a task be specific to a selected object- only that a task be associated with at least one object.

Rejection under 35 U.S.C. § 103(a) of Claims 3, 4, 8 - 10, 14, 15, 19 - 21, 24, 25, and 29 – 31

Appellant asserts that the Examiner's finding that image recognition is old and well known in the art as evidenced by Slater is error because Bolle teaches an environmentally sensitive image capture apparatus, whereas Henry teaches the

provision of a relatively large non-portable apparatus. (Appeal Br. 14). Hence, "[t]here is no suggestion regarding why a given practitioner might be motivated to lead a 'person' to such devices, or to move such devices to a given 'company' or 'location,' to permit corresponding recognition activity." (Appeal Br. 14).

Appellant's argument is not persuasive as to error in the rejection for at least two reasons. First, the fact that the Bolle apparatus requires an enclosed box environment to function, as asserted by Appellant, means more that it has the attributes of a non-portable device than not, and hence is more likely to be combinable with the admittedly non-portable device of Henry. Second, the argument does nothing to contest the issue of image recognition as old and well known in the art which is the basis of the rejection of this separately grouped set of claims. (FF 9).

CONCLUSIONS OF LAW

We conclude the Appellant has not shown that the Examiner erred in rejecting claims 1, 2, 5 - 7, 11 - 13, 16 - 18, 22, 23, 26 - 28, and 32 under 35 U.S.C. § 103(a) given Bolle in view of Henry.

We conclude the Appellant has not shown that the Examiner erred in rejecting claims 3, 4, 8 - 10, 14, 15, 19 - 21, 24, 25, and 29 - 31 under 35 U.S.C. § 103(a) given Bolle in view of Henry and further in view of Slater.

Appeal 2009-003879
Application 09/698,310

<div align="center">DECISION</div>

The decision of the Examiner to reject claims 1-32 is AFFIRMED.

JRG

<div align="center">AFFIRMED</div>

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